

**United States Department of Labor
Employees' Compensation Appeals Board**

N.C., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Kent, CT, Employer**

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**Docket No. 12-1955
Issued: July 25, 2013**

Appearances:

Alan J. Shapiro, Esq., for the appellant

Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:

RICHARD J. DASCHBACH, Chief Judge

COLLEEN DUFFY KIKO, Judge

PATRICIA HOWARD FITZGERALD, Judge

On September 24, 2012 appellant, through counsel, filed a timely appeal of a July 20, 2012 decision of the Office of Workers' Compensation Programs (OWCP) denying modification of a May 5, 1999 loss of wage-earning capacity decision. The Board docketed the appeal as No. 12-1955.

The record reveals that on March 14, 1996 appellant, then a 41-year-old full-time rural carrier, filed an occupational disease claim alleging that on December 29, 1995 she first became aware that the two cervical slipped discs were caused by her processing and delivery of mail and the added exertion of inclement winter weather on her delivery of mail. OWCP accepted the claim for cervical strain and aggravation of preexisting fibromyalgia. On August 15, 1997 appellant accepted the employing establishment's August 6, 1997 modified job offer working four hours per day. The employing establishment noted that the modified job assignment was based upon claim numbers xxxxxx967 and xxxxxx579.¹ By decision dated May 5, 1999, OWCP

¹ The duties of the position included answering the telephone, filing case mail no higher than shoulder level and renumbering approximately 500 post office boxes. The position was for the duration of her limited-duty period and could be modified as her medical restrictions changed. Physical requirements of the position included: up to 10 percent carrying/lifting; reaching above the shoulder; driving a vehicle; walking, bending/stooping, twisting and pulling/pushing; sitting and standing based on appellant's comfort; no kneeling; and up to 50 percent fine manipulation and simple grasping.

issued a loss of wage-earning capacity decision, effective September 3, 1997, based upon a modified rural letter carrier job working 20 hours per week with wages of \$19.70 per hour. It found that the position fairly and reasonably represented appellant's loss of wage-earning capacity.

OWCP procedures provide that cases should be doubled when a new injury is reported for an employee who previously filed an injury claim for a similar condition and further indicates that the cases should be doubled as soon as the need to do so becomes apparent.²

The Board, having reviewed the case record submitted by OWCP, finds that the record is incomplete as it appears that the modified job duty, upon which the May 5, 1999 loss of wage-earning capacity decision was based, considered injuries sustained in both claim number xxxxxx967 and claim number xxxxxx579. The record before the Board contains no evidence from claim number xxxxxx967.

The record is also missing evidence from claim number xxxxxx579 including the initial claim form, the medical evidence upon which the modified job was based and the initial acceptance of the claim. As the record before the Board does not contain evidence from claim number xxxxxx967 referenced by the employing establishment in the August 6, 1997 modified job offer, the Board is unable to properly address and adjudicate whether the May 5, 1999 loss of wage-earning capacity decision was proper or should be modified.

The Board, therefore, finds that the appeal docketed as No. 12-1955 is not currently in posture for a decision as the missing evidence would not allow for an informed adjudication on the part of this Board. The case is remanded for OWCP to combine the present case record, claim number xxxxxx579 with claim number xxxxxx967. After such further development as deemed necessary, OWCP shall issue a *de novo* decision.

² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Doubling Case Files*, Chapter 2.400.8(c)(1) (February 2000).

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated July 20, 2012 be set aside and the case remanded for further action in conformance with this order of the Board to be followed by an appropriate decision.

Issued: July 25, 2013
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board